

Section 302.105 Antidegradation

The purpose of this Section is to protect existing uses of all waters of the State of Illinois, maintain the quality of waters with quality that is better than water quality standards, and prevent unnecessary deterioration of waters of the State.

a) Existing Uses

Uses actually attained in a surface water body or water body segment on or after November 28, 1975, whether or not they are included in the water quality standards, must be maintained and protected. Examples of degradation of existing uses of the waters of the State include:

- 1) an action that would result in the deterioration of the existing aquatic community, such as a shift from a community of predominantly pollutant-sensitive species to pollutant-tolerant species or a loss of species diversity;
- 2) an action that would result in a loss of a resident or indigenous species whose presence is necessary to sustain commercial or recreational activities; or
- 3) an action that would preclude continued use of a surface water body or water body segment for a public water supply or for recreational or commercial fishing, swimming, paddling or boating.

b) Outstanding Resource Waters

- 1) Waters that are designated as Outstanding Resource Waters (ORWs) pursuant to 35 Ill. Adm. Code 303.205 and listed in 35 Ill. Adm. Code 303.206 must not be lowered in quality except as provided below:
 - A) Activities that result in short-term, temporary (i.e., weeks or months) lowering of water quality in an ORW; or
 - B) Existing site stormwater discharges that comply with applicable federal and State stormwater management regulations and do not result in a violation of any water quality standards.
- 2) Any activity in subsection (b)(1)(A) or (b)(1)(B) that requires a National Pollutant Discharge Elimination System (NPDES) or a Clean Water Act (CWA) Section 401 certification must also comply with subsection (c)(2).

- 3) Any activity listed in subsection (b)(1) or any other proposed increase in pollutant loading to an ORW must also meet the following requirements:
 - A) All existing uses of the water will be fully protected; and
 - B) Except for activities falling under one of the exceptions provided in subsection (b)(1)(A) or (B) above:
 - i) The proposed increase in pollutant loading is necessary for an activity that will improve water quality in the ORW; and
 - ii) The improvement could not be practicably achieved without the proposed increase in pollutant loading.
- 4) Any proposed increase in pollutant loading requiring an NPDES permit or a CWA 401 certification for an ORW must be assessed pursuant to subsection (f) to determine compliance with this Section.

c) High Quality Waters

- 1) Except as otherwise provided in subsection (d) of this Section, waters of the State whose existing quality is better than any of the established standards of this Part must be maintained in their present high quality, unless the lowering of water quality is necessary to accommodate important economic or social development.
- 2) The Agency must assess any proposed increase in pollutant loading that necessitates a new, renewed or modified NPDES permit or any activity requiring a CWA Section 401 certification to determine compliance with this Section. The assessment to determine compliance with this Section must be made on a case-by-case basis. In making this assessment, the Agency must:
 - A) Consider the fate and effect of any parameters proposed for an increased pollutant loading.
 - B) Assure the following:

- i) The applicable numeric or narrative water quality standard will not be exceeded as a result of the proposed activity;
- ii) All existing uses will be fully protected;
- iii) All technically and economically reasonable measures to avoid or minimize the extent of the proposed increase in pollutant loading have been incorporated into the proposed activity; and
- iv) The activity that results in an increased pollutant loading will benefit the community at large.

C) Utilize the following information sources, when available:

- i) Information, data or reports available to the Agency from its own sources;
- ii) Information, data or reports supplied by the applicant;
- iii) Agency experience with factually similar permitting scenarios; and
- iv) Any other valid information available to the Agency.

d) Activities Not Subject to a Further Antidegradation Assessment

The following activities will not be subject to a further antidegradation assessment pursuant to subsection (c) of this Section.

- 1) Short-term, temporary (i.e., weeks or months) lowering of water quality;
- 2) Bypasses that are not prohibited at 40 CFR 122.41(m);
- 3) Response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, corrective actions, pursuant to the Resource Conservation and Recovery Act (RCRA), as amended, or similar federal or State authority, taken to alleviate a release into the environment of hazardous substances, pollutants or contaminants which may pose a danger to public health or welfare;

- 4) Thermal discharges that have been approved through a CWA Section 316(a) demonstration;
- 5) New or increased discharges of a non-contact cooling water:
 - A) without additives, except as provided in subsection (d)(5)(B), returned to the same body of water from which it was taken, as defined by 35 Ill. Adm. Code 352.104, provided that the discharge complies with applicable Illinois thermal standards; or
 - B) containing chlorine when the non-contact cooling water is treated to remove residual chlorine, and returned to the same body of water from which it was taken, as defined in 35 Ill. Adm. Code 352.104, provided that the discharge complies with applicable Illinois thermal and effluent standards at 35 Ill. Adm. Code 302, 303, and 304;
- 6) Discharges permitted under a current general NPDES permit as provided by 415 ILCS 5/39(b) or a nationwide or regional CWA Section 404 permit are not subject to facility-specific antidegradation review; however, the Agency must assure that individual permits or certifications are required prior to all new pollutant loadings or hydrological modifications that necessitate a new, renewed or modified NPDES permit or CWA Section 401 certification that affects waters of particular biological significance. Waters of particular biological significance may include streams listed in a 1991 publication by the Illinois Department of Conservation entitled “Biologically Significant Illinois Streams”; or
- 7) Changes to or inclusion of a new permit limitation that does not result in an actual increase of a pollutant loading, such as those stemming from improved monitoring data, new analytical testing methods, new or revised technology or water quality based effluent limits.

e) Lake Michigan Basin

Waters in the Lake Michigan basin as identified in 35 Ill. Adm. Code 303.443 are also subject to the requirements applicable to bioaccumulative chemicals of concern found at Section 302.521 of this Part.

f) Antidegradation Assessments

In conducting an antidegradation assessment pursuant to this Section, the Agency

must comply with the following procedures.

- 1) A permit application for any proposed increase in pollutant loading that necessitates the issuance of a new, renewed, or modified NPDES permit or a CWA Section 401 certification must include, to the extent necessary for the Agency to determine that the permit application meets the requirements of this Section, the following information:

- A) Identification and characterization of the water body affected by the proposed load increase or proposed activity and the existing water body's uses. Characterization must address physical, biological and chemical conditions of the water body.
- B) Identification and quantification of the proposed load increases for the applicable parameters and of the potential impacts of the proposed activity on the affected waters.
- C) The purpose and anticipated benefits of the proposed activity. Such benefits may include:
 - i) Providing a centralized wastewater collection and treatment system for a previously unsewered community;
 - ii) Expansion to provide service for anticipated residential or industrial growth consistent with a community's long range urban planning;
 - iii) Addition of a new product line or production increase or modification at an industrial facility; or
 - iv) An increase or the retention of current employment levels at a facility.
- D) Assessments of alternatives to proposed increases in pollutant loading or activities subject to Agency certification pursuant to Section 401 of the CWA that result in less of a load increase, no load increase or minimal environmental degradation. Such alternatives may include:
 - i) Additional treatment levels, including no discharge alternatives;
 - ii) Discharge of waste to alternate locations, including

publicly-owned treatment works and streams with greater assimilative capacity; or

- iii) Manufacturing practices that incorporate pollution prevention techniques.

E) Any additional information the Agency may request.

F) Proof that a copy of the application has been provided to the Illinois Department of Natural Resources.

2) The Agency must complete an antidegradation assessment in accordance with the provisions of this Section on a case-by-case basis.

A) The Agency must consider the criteria stated in Section 302.105(c)(2).

B) The Agency must consider the information provided by the applicant pursuant to subsection (f)(1).

C) After its assessment, the Agency must produce a written analysis addressing the requirements of this Section and provide a decision yielding one of the following results:

- i) If the proposed activity meets the requirements of this Section, then the Agency must proceed with public notice of the NPDES permit or CWA Section 401 certification and include the written analysis as a part of the fact sheet accompanying the public notice;

- ii) If the proposed activity does not meet the requirements of this Section, then the Agency must provide a written analysis to the applicant and must be available to discuss the deficiencies that led to the disapproval. The Agency may suggest methods to remedy the conflicts with the requirements of this Section;

- iii) If the proposed activity does not meet the requirements of this Section, but some lowering of water quality is allowable, then the Agency will contact the applicant with the results of the review.

If the reduced loading increase is acceptable to the applicant, upon the receipt of an amended application, the Agency will proceed to public notice; or if the reduced loading increase is not acceptable to the applicant, the Agency will transmit its written review to the applicant in the context of an NPDES permit denial or a CWA Section 401 certification denial.

- 3) The Agency will conduct public notice and public participation through

the public notice procedures found in 35 Ill. Adm. Code 309.109 or CWA Section 401 certifications. The Agency must incorporate the following information into a fact sheet accompanying the public notice:

- A) A description of the activity, including identification of water quality parameters for which there will be an increased pollutant loading;
- B) Identification of the affected surface water body or water body segment, any downstream surface water body or water body segment also expected to experience a lowering of water quality, characterization of the designated and current uses of the affected surface water body or water body segment and identification of which uses are most sensitive to the proposed load increase;
- C) A summary of any review comments and recommendations provided by Illinois Department of Natural Resources, local or regional planning commissions, zoning boards and any other entities the Agency consults regarding the proposal;
- D) An overview of alternatives considered by the applicant and identification of any provisions or alternatives imposed to lessen the load increase associated with the proposed activity; and
- E) The name and telephone number of a contact person at the Agency who can provide additional information.

(Amended at 27 Ill. Reg. 166, effective December 20, 2002)